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BEFORE THE
# Federal Communications Commission
WASHINGTON, DC 20554

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| In the Matter of | ) | |
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| Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 | ) | CC Docket No. 96-98 |

**COMMENTS OF**
**MOBILEMEDIA COMMUNICATIONS, INC.**

Gene P. Belardi
Vice President
**MobileMedia Communications, Inc.**
2101 Wilson Boulevard, Suite 935
Arlington, Virginia 22201
(703) 312-5152

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## SUMMARY

MobileMedia applauds the Commission's prompt inquiry into whether interconnection arrangements between incumbent local exchange carriers ("LECs") and commercial mobile service ("CMRS") providers fall within the scope of Section 251. Although the Commission has asked that parties address issues not already addressed in CC Docket No. 95-185 (the LEC-CMRS Interconnection proceeding), MobileMedia hereby draws the Commission's attention to the record developed in that proceeding. The record resoundingly demonstrates that existing interconnection arrangements between the LECs and paging carriers deny paging carriers any compensation for the switching and transport functions that they perform in terminating LEC traffic, contrary to Congress' intent that competitive carriers should be compensated for traffic that is terminated over their networks. The record also demonstrates that current arrangements reflect extreme and unjustified variations in pricing for identical interconnection components.

The record in CC Docket 95-185 presents the Commission with compelling reasons to adopt interim measures that require LECs to compensate paging carriers for LEC-originated calls terminated on the paging carriers' networks. In the current environment, paging carriers pay LECs for carrying traffic originating on LEC networks and receive absolutely no compensation from LECs for terminating such traffic. While the Commission attempts to create cost-based rates for terminating this traffic, it should adopt interim rules which require LECs to compensate all CMRS providers at the same rate for terminating calls. Thus, cellular, paging, and SMR providers would receive the same compensation from a LEC for terminating calls originating on LEC networks.

The Commission has ample jurisdiction to adopt such interim measures. Specifically, Congress empowered the Commission in 1993 to order *any* common carrier to interconnect with a CMRS provider pursuant to Sections 332 and 201 Nothing in the amended Section 332 or legislative history indicates that Congress intended to limit the Commission's CMRS interconnection authority to interstate services. In fact, to ensure that states did not claim jurisdiction over such services based on a theory that a particular commercial mobile radio service was intrastate in nature, Congress amended Section 2(b) to make clear that the Commission retained plenary authority to regulate CMRS. Nothing in the 1996 Act indicated that Congress intended to alter this jurisdictional arrangement. Importantly, the 1996 Act did not even amend Sections 332 or 2(b). Thus, the 1996 Act has no affect on the Commission's authority under Section 332 to require that LEC-CMRS interconnection occur pursuant to compensation principles.

Even assuming, arguendo, that the 1996 Act superseded the Commission's authority to regulate LEC-CMRS interconnection under Section 332, Section 251 provides the Commission with ample authority to adopt an interim policy requiring that LEC-CMRS interconnection be governed by compensation principles. In fact, Section 251(b)(5) *requires* LECs to establish compensation arrangements for the transport and termination of traffic.

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## COMMENTS OF MOBILEMEDIA COMMUNICATIONS, INC.

MobileMedia Communications, Inc. ("MobileMedia"),[1] hereby submits these comments in response to the Notice of Proposed Rulemaking in the above-captioned docket.[2] In this proceeding, the Commission seeks comment on various proposals to implement the local competition provisions of the Communications Act of 1934, as amended by Sections 251 and 252 of the 1996 Act.[3]

## INTRODUCTION

The 1996 Act amended the Communications Act to add Sections 251 and 252, "Interconnection," and "Procedures for Negotiation, Arbitration and Approval of Agreements." These

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1 MobileMedia, the parent company of MobileMedia Paging, Inc. and Mobile Communications Corporation of America, holds narrowband paging licenses throughout the common carrier and private carrier bands. In addition, the company has two nationwide one-way wireless networks, and two nationwide narrowband PCS licenses.

2 *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 96-182 (Apr. 19, 1996) ("*NPRM*").

3 Sections 251 and 252 of the Communications Act were recently adopted in the Telecommunications Act of 1996, §101, Pub. Law No. 104-104, 110 Stat. 56, 71 (1996) ("1996 Act") (to be codified at 47 U.S.C. §§ 251 and 252).

new sections represent Congress' move to restructure the local telecommunications market and remove the economic impediments to efficient entry that existed under a monopoly paradigm. Section 251(d) requires the Commission to establish rules to implement the requirements of Section 251, including the core interconnection requirements of Section 251(c).

In partial response to this Congressional directive, the Commission has requested comment on whether interconnection arrangements between incumbent local exchange carriers ("LECs") and commercial mobile service ("CMRS") providers fall within the scope of Section 251(c)(2). Although the Commission has asked that parties address issues not already addressed in CC Docket No. 95-185 (the LEC-CMRS Interconnection proceeding), MobileMedia hereby draws the Commission's attention to the record developed in that proceeding. The record resoundingly demonstrates that existing interconnection arrangements between the LECs and paging carriers deny paging carriers any compensation for the switching and transport functions that they perform in terminating LEC traffic,[4] contrary to Congress' intent that competitive carriers should be compensated for traffic that is terminated over their networks.[5] The record also demonstrates that current arrangements reflect extreme and unjustified variations in pricing for identical interconnection components.

The paging industry has made a convincing, factual showing that current paging interconnection arrangements are patently unreasonable, wholly unsupported and unreasonably

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4 *See, e.g.,* Comments of the Personal Communications Industry Association ("PCIA") at 6, 11; Reply Comments of PCIA at 7-8; *see also* Comments of The Westlink Company at 6-8; Reply Comments of The Westlink Company at 4-11.

5 *See* §§ 251(A)(5) and 252(d)(2)(A)(i).

discriminatory. For example, PageNet reported that some LECs have refused to respect the co-carrier status of paging providers by using their market power to charge "grossly excessive and patently anticompetitive" interconnection fees.[6] AirTouch noted that paging providers are not rewarded for "stimulating additional usage revenues" to the LECs due to calls initiated by paged customers.[7] Arch Communications Group pointed out that all of its interconnection agreements fail to provide compensation for interconnection and call termination, and that LECs have actually charged Arch for terminating landline originating calls.[8] Arch also provided the Commission with examples of circumstances in which the charges associated with connection to landline networks are dissimilar for paging carriers vis a vis other CMRS providers. According to Arch, Sprint/North Carolina Telephone ("S/CT") charges paging companies $24.00/month for 100 telephone numbers, "which is 34 times more than the $7.00 per month for 1000 numbers S/CT charges to cellular carriers."[9]

The record in CC Docket 95-185 presents the Commission with compelling reasons to adopt interim measures that require LECs to compensate paging carriers for LEC-originated calls

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6 Comments of Paging Network, Inc ("PageNet") at 19. According to PageNet, numerous LECS, including Centel, Ameritech, US WEST, Bell Atlantic, SNET, SouthWestern Bell and BellSouth impose a single flat rate per trunk, but this rate varies as much as 50% from LEC to LEC. Others, including Pacific Bell, New England Telephone and GTE, charge an additional per-minute of use charge for LEC-originated traffic carried on the trunk.

7 Comments of AirTouch Communications, Inc ("AirTouch") at 59.

8 Comments of Arch Communications Group, Inc ("Arch") at 3.

9 *Id.* at 23-24.

terminated on the paging carriers' networks. In the current environment, paging carriers pay LECs for carrying traffic originating on LEC networks and receive absolutely no compensation from LECs for terminating such traffic. Consistent with the Commission's current mutual compensation policy, paging carriers are entitled to compensation for terminating calls on their networks. While the Commission attempts to create cost-based rates for terminating this traffic, it should adopt interim rules which require LECs to compensate all CMRS providers at the same rate for terminating calls. Thus, cellular, paging, and SMR providers would receive the same compensation from a LEC for terminating calls originating on LEC networks.

## I. THE COMMISSION HAS JURISDICTION PURSUANT TO SECTION 332 OF THE COMMUNICATIONS ACT TO REQUIRE LECs TO COMPENSATE PAGING CARRIERS FOR CALL TERMINATION

As a result of the 1996 Act, the Commission must determine which sections of the Communications Act govern LEC-CMRS interconnection.[10] In CC Docket No. 95-185, LECs almost universally assert that Sections 251 and 252 govern LEC-CMRS interconnection. MobileMedia, however, believes that LEC-CMRS interconnection is governed by Section 332, unless the Commission determines that CMRS has become a substitute for local exchange service and competitive market conditions do not adequately protect consumers.

### A. Section 332 Was Amended in 1993 To Preclude States From Regulating CMRS

Prior to the 1993 amendment of Section 332, the Commission had authority under Section 201(a) to order common carriers engaged in interstate or foreign communications to interconnect with each other.[11] The Commission had no authority, however, to order common carriers engaged in intrastate communication to interconnect with other carriers.

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10 *See NPRM* at ¶¶ 166-185.

11 Section 201 provides:

> It shall be the duty of *every* common carrier engaged in interstate or foreign communication by wire or radio . . ., in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers. . . ."

47 U.S.C. § 201(a).

In 1993, Congress amended Section 332 of the Communications Act to "establish a Federal regulatory framework governing the offering of all commercial mobile service."[12] This federal regulatory framework was deemed necessary to, among other things, advance a seamless national wireless communications network.[13] To further the development of this national network, Congress empowered the Commission to order *any* common carrier to interconnect with a CMRS provider pursuant to Sections 332 and 201.[14] Nothing in the amended Section 332 or legislative history indicates that Congress intended to limit the Commission's new CMRS interconnection authority to interstate services. As a result, the Commission's authority to order interconnection was expanded slightly. In addition to its authority to order common carriers engaged in interstate communications to interconnect, the Commission is authorized to order *any* common carrier to interconnect with *any CMRS provider*. Unless a CMRS provider is involved, the Commission's authority remains unchanged and is limited to interstate services. Because LECs are common carriers, the Commission is authorized -- indeed, required — to regulate their interconnection with CMRS providers pursuant to Section 201.

Section 201, in turn, requires that interconnection be provided at just and reasonable rates. Thus, the Commission is authorized to order interconnection under Section 332 and to

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12 H.R. Rep. No. 103-213, 103d Cong., 1st Sess. 490 (1993) ("Conference Report").

13 H.R. Rep. No. 103-111, 103d Cong., 1st Sess. at 261 (1993); Conference Report at 491.

14 47 U.S.C. § 332(c)(1)(B).

ensure that the rates charged therefor are just and reasonable under Section 201. The states, in contrast, are excluded from the regulation of LEC-CMRS interconnection.

### B. Pursuant to Section 2(b), States Are Precluded From Regulating CMRS As An Intrastate Service

Congress traditionally has limited Commission jurisdiction over intrastate matters. Prior to 1993, Section 2(b) of the Communications Act stated that:

> Except as provided in sections 223 through 227, inclusive, and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio. . . ."[15]

Thus, the Commission had no authority over intrastate services.

In 1993, however, Congress specifically found that CMRS "operate without regard to state lines as an integral part of the national telecommunications infrastructure."[16] To ensure that states did not claim jurisdiction over such services based on a theory that a particular commercial mobile radio service was intrastate in nature, Congress amended Section 2(b) to make clear that the Commission retained plenary authority to regulate CMRS. Accordingly, Section 2(b) now reads:

> Except as provided in sections 223 through 227, inclusive, and *Section 332*, and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or

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15 47 U.S.C. § 2(b)(prior to 1993 amendment)

16 House Report at 260

> regulations for or in connection with intrastate communication service by wire or radio. . . ."[17]

Thus, Congress has determined that CMRS are jurisdictionally interstate in nature and are to be regulated by the Commission.

As previously stated, paging carriers pay LECs for carrying traffic originating on LEC networks and receive absolutely no compensation from LECs for terminating such traffic. Paging carriers are entitled to compensation under the Commission's mutual compensation requirements, however, for terminating calls on their networks. The FCC should exercise its authority under Sections 2(b) and 332 to require LECs to compensate CMRS providers for terminating calls. Further, all CMRS providers should receive the same rate for terminating LEC-originated calls until cost-based rates are established.

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[17] 47 U.S.C. § 2(b) (1993).

## II. SECTIONS 251 AND 252 APPLY TO ALL INTERCONNECTION MATTERS EXCEPT THOSE GOVERNED BY SECTION 332

MobileMedia concurs with the Commission that the 1996 Act was designed primarily to open monopoly local exchange markets to competition.[18] In this regard, Section 251 generally applies only to local exchange carriers. Although the general duties contained in Section 251(a) apply to all telecommunications carriers (including CMRS providers), the remainder of this section does not apply to CMRS providers. Section 251(b) imposes duties only on "all local exchange carriers."[19] Similarly, Section 251(c)(2), which specifically deals with interconnection obligations, only applies to *incumbent* local exchange carriers.[20] CMRS providers are specifically exempted from the definition of a local exchange carrier.[21]

Even if CMRS providers were not categorically excluded from the definition of a local exchange carrier, they nevertheless would not fit the definition. A "local exchange carrier" is defined as "any person that is engaged in the provision of telephone exchange service or exchange access."[22] CMRS providers, however, do not offer telephone exchange services.

"Telephone exchange service" is narrowly defined by Section 3(a)(1) of the 1996 Act as:

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18 *See NPRM* at ¶¶ 1, 8, 14.

19 47 U.S.C. §§ 251(b).

20 47 U.S.C. § 153(44).

21 47 U.S.C. § 153(44). As discussed in more detail below, the Commission retains authority to classify CMRS providers as local exchange carriers in the future if circumstances warrant such treatment. *Id.*

22 47 U.S.C. § 153(44).

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service.

CMRS licenses are issued for geographic areas, however, that do not correspond to LATA boundaries which govern the offering of telephone exchange services.[23] In fact, until recently, many CMRS providers where unsure whether they could use their spectrum to provide local exchange-type services.[24] The Commission itself acknowledged that its rules were inhibiting CMRS providers from offering such services.[25] Thus, the Commission proposed for the first time to allow CMRS providers to use their spectrum to provide "wireless local loop" services without restriction. Congress excluded CMRS providers from the local exchange carrier definition under the correct assumption that CMRS providers currently do not provide telephone exchange service.

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23 This discrepancy between LATA boundaries and CMRS licensing areas forced many BOCs to seek waivers of the MFJ to provide cellular and paging service. *See* MICHAEL K. KELLOGG, ET AL., FEDERAL TELECOMMUNICATIONS LAW § 13.5.2 (1992 & 1995 Supp.).

24 *See Amendment of the Commission's Rules to Permit Flexible Service Offerings*, WT Docket No. 96-6, *Notice of Proposed Rulemaking*, FCC 96-17, ¶¶ 1, 5 (Jan. 25, 1996), 11 Fed. Reg. 2445 (1996).

25 *Id.* at ¶ 5.

The Commission questions, however, whether CMRS providers should be considered local exchange carriers.[26] Based on the foregoing, it is clear that Congress did not consider CMRS providers to be local exchange carriers at this time. Further, the legislative history of the 1996 Act indicates that CMRS providers should not be deemed local exchange carriers unless their service becomes a replacement for a substantial portion of telephone exchange service.[27] This treatment of CMRS is consistent with the 1993 amendments to Section 332 which precluded states from regulating CMRS rates unless such services become a replacement for local exchange service by a substantial portion of the public and competitive market conditions would not protect consumers from unjust rates and practices.

Pursuant to Section 332, various states have petitioned the Commission for authority to regulate CMRS. The Commission has denied each request. Thus, CMRS providers are not providing services which act as a substitute for local exchange service for a substantial portion of the public at this time. Further, the Commission only recently proposed amendments to its rules which would permit CMRS providers to use their spectrum to provide wireless local exchange service without restriction. Accordingly, CMRS providers cannot be considered local exchange carriers under the 1996 Act and Section 251. Consistent with the legislative history of the 1996 Act and the 1993 amendments to the Communications Act, CMRS providers should not be considered local exchange carriers unless: (1) they serve as a substitute for local exchange

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26 *See NPRM* at ¶ 195.

27 H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 115-16 (1996).

providers by a substantial portion of the public; and (2) competitive market conditions fail to adequately protect consumers from unreasonable pricing. There is no record to support such a finding here.

In sum, the following analysis should be used to determine whether Section 332 or 251 govern interconnection between LECs and CMRS. First, CMRS-LEC interconnection is generally governed by Section 332. If, however, a particular CMRS licensee provides service that is a substitute for local exchange service for a substantial portion of the public and competitive conditions do not protect consumers from unfair practices, the CMRS provider shall be considered a local exchange carrier. Once this finding is made, Section 332 would no longer govern interconnection between a traditional LEC and the CMRS provider. Instead, Section 251 would govern such interconnection arrangements.[28]

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[28] In essence, the same analysis applies with regard to state regulation of CMRS rates. States are precluded from regulating such rates by Section 332 unless: (1) CMRS serves as a substitute for local exchange service for a substantial portion of the public; and (2) competitive conditions do not adequately protect consumers from unjust rates and practices. *See* 47 U.S.C. § 332(c)(3).

## III. THE COMMISSION CAN REQUIRE LECs TO COMPENSATE PAGING CARRIERS FOR CALL TERMINATION UNDER SECTION 251

Even assuming, arguendo, that Section 332 does not govern LEC-CMRS interconnection, the Commission has ample authority under Section 251 to adopt an interim policy requiring that LECs compensate paging carriers for call termination. First, Section 251(b)(5) already requires LECs to establish reciprocal compensation arrangements for the transport and termination of traffic. Thus, a Commission determination that LECs must compensate paging carriers for call termination would not violate Section 251.

Second, as the Commission itself recognizes, nothing in the 1996 Act prohibits the imposition of national standards governing interconnection or ceilings on the rates to be charged for interconnection.[29] By merely requiring LECs to compensate paging and other CMRS carriers for terminating LEC-originated calls, the Commission would be creating rules which "serve as a *de facto* floor or set of minimum standards that [will] guide the parties in the voluntary negotiation process."[30] Further, requiring such compensation would not undermine the role of states (although MobileMedia continues to believe, for the reasons stated above, that Congress did not intend for the states to have any involvement in the LEC-CMRS interconnection process). For example, if the Commission required LECs to compensate paging carriers for the *actual cost* of terminating traffic originating on LEC networks, states would be free to determine the actual cost of interconnection.

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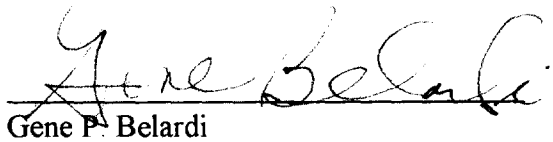
29 *See NPRM* at ¶¶ 29, 30, 33, 36, 136.

30 *See NPRM* at ¶ 20.

## CONCLUSION

For the foregoing reasons, the Commission should adopt interim rules without delay that require LECs to compensate CMRS providers for terminating traffic originating on LEC networks. As stated above, the Commission has ample authority to impose such a "compensation" requirement under Section 332 or Section 251 Further, the record in CC Docket No. 95-185 establishes the need for immediate Commission action.

Respectfully submitted,



Gene P. Belardi
Vice President
**MobileMedia Communications, Inc.**
2101 Wilson Boulevard, Suite 935
Arlington, Virginia 22201
(703) 312-5152

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